

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

JOHN LEROY CLEMONS,
Plaintiff,

v.

DON ANDERSON, et al.,
Defendants.

Case No. [15-cv-02966-NJV](#)

**ORDER REVOKING PLAINTIFF'S
IN FORMA PAUPERIS STATUS**

This case, filed by pro se Plaintiff was dismissed on March 9, 2016. On March 29, 2016, Plaintiff filed a Notice of Appeal of this court's Order of Dismissal and Judgment. (Doc. 47). On April 8, 2016, the Court of Appeals for the Ninth Circuit referred the case back to this court for the limited purpose of determining whether Plaintiff's *in forma pauperis* status should continue or whether the appeal is frivolous or taken in bad faith. (Doc. 50).

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed *in forma pauperis*. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), "a party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court." The party must attach an affidavit that (1) shows in detail "the party's inability to pay or give security for fees and costs," (2) "claims an entitlement to redress," and (3) "states the issues that the party intends to present on appeal." Fed. R.App. P. 24(a)(1). However, even if a party provides proof of indigence, "an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "An appeal is in 'good faith' where it seeks review of any issue that is 'non-frivolous.'" *Morales v. Tingey*, No. C 05-3498 PJH PR, 2013 WL 685208, at *1

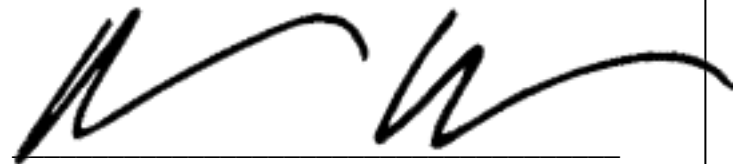
(N.D. Cal. Feb. 25, 2013) (citing *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002)).

The court finds that Plaintiff's appeal is frivolous and taken in bad faith. As discussed in the Order of Dismissal (Doc. 43), Plaintiff, despite several extensions and warnings, failed to file an amended complaint. Plaintiff's original Complaint impermissibly sought this court's direct intervention into Plaintiff's ongoing state criminal prosecution, in violation of the Younger Abstention doctrine. *See ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014) ("In *Younger v. Harris*, the Supreme Court reaffirmed the long-standing principle that federal courts sitting in equity cannot, absent exceptional circumstances, enjoin pending state criminal proceedings."). Plaintiff's repeated failures to file an amended complaint or to respond to the Motion to Dismiss evidenced Plaintiff's unwillingness to prosecute this case outside of his requests to have this court "quash" the state criminal charges against him. Plaintiff's recent letters, filed after Judgment was entered, do nothing to explain why he failed to file an amended complaint in the more than two months following the court's Order dismissing the original Complaint. *See* Order of January 4, 2016 (Doc. 38). It is clear that Plaintiff only seeks this court's intervention in his state criminal prosecution.¹

Accordingly, Plaintiff's appeal of the dismissal of this action is frivolous and taken in bad faith and his *in forma pauperis* status is **REVOKED**. The Clerk shall forward this Order to the Ninth Circuit in case No. 16–15537.

IT IS SO ORDERED.

Dated: April 15, 2016



NANDOR J. VADAS
United States Magistrate Judge

¹ Indeed, Plaintiff's letter dated March 13, 2016, requests that this court "see how this criminal matter was brought by named Defendants in a matter that [Plaintiff] had no choice but to accept the deal . . ." and then goes on to discuss the search of his house that led to his charges.

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CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee of the U.S. District Court,
Northern District of California.

That on April 15, 2016, I SERVED a true and correct copy(ies) of the attached, by placing
said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
receptacle located in the Clerk's office.

John Leroy Clemons ID: #41687
San Quentin State Prison
San Quentin, CA 94974

Dated: April 15, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
Robert Illman, Law Clerk to the
Honorable NANDOR J. VADAS